

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN WILLIAM CRISMORE**, on January 20, 1999
at 3:00 P.M., in Room 405 Capitol.

ROLL CALL

Members Present:

Sen. William Crismore, Chairman (R)
Sen. Dale Mahlum, Vice Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Mack Cole (R)
Sen. Lorents Grosfield (R)
Sen. Tom Keating (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Glenn Roush (D)
Sen. Mike Taylor (R)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Larry Mitchell, Legislative Branch
Jyl Scheel, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:
Executive Action: SB 40; SB 48

EXECUTIVE ACTION ON SB 40

Motion: SEN. COCCHIARELLA moved that SB 40 DO PASS AS AMENDED
according to AMENDMENT SB004003.alm.

Discussion: **SENATOR COCCHIARELLA** stated there was concern during the hearing regarding why just electrical cooperatives were being given the right of first refusal. This amendment addresses allowing other public entities to have the right of first refusal to help resolve that concern.

SENATOR KEATING stated, in the body of the bill, by deleting the restriction where the Department can sell their power, opens the door for them to sell the power to anyone that is willing to buy. As a rule, they would offer sale of the electricity in open bid, hope they get a good price and make a deal with the high bidder. The amendment still gives a preference and anytime you establish a preference you throw cold water on a truly competitive public bid. By establishing any kind of preference for anybody complicates things terribly when it comes to the sale of a product, especially by a state office, because they so many hoops to jump through anyhow. I would suggest we not amend the bill and allow the Department to sell if and when they are able to. They have a long range contract now that they cannot sell unless that contract is fulfilled or canceled. It is a 17 year contract and I doubt the state is going to cancel because it is too good a price.

SENATOR COCCHIARELLA stated she thought the most important words in the amendment are "electrical supplier licensed in Montana". This is a jobs local Montana protection preference. The only people given a preference are licensed in Montana. This restricts or does not give right of first refusal to anyone outside the state. The preference is, this amendment protects anyone in Montana who is licensed. It does not exclude anyone in the Montana market, who is licensed here, from competing in the bidding process. Montana licensed businesses have the preference over someone out-of-state.

SENATOR TAYLOR added that he is always nervous when preferences are set. He stated he was certainly for jobs and income but Montana has a history of having the most restrictive, regulated, protective bills in the nation on businesses so they are protected. He was not sure preference could be given legally and thought there was a federal statute saying there are problems with that. We should be sure the law does allow this because this is an electrical utility. He was also concerned if there was a protection issue here, would it eventually drive cost.

Ann Yates, DNRC Legal Counsel, responded she was not completely certain which statute he was referring to. She did not see anything at this time that would be a problem. **SEN. TAYLOR** said to check out the rules of interstate commerce.

SENATOR COCCHIARELLA stated she would withdraw her motion on the amendment and on the bill in order to allow time to do further checking. She would not want to put an amendment on anything that is unconstitutional or illegal. She felt there were too many misconceptions right now and would like those clarified before executive action is taken.

SENATOR GROSFIELD stated another question to be checked on is this preference would go to the electricity suppliers licensed in Montana. He questioned what one has to do to become licensed as an electricity supplier. Do you have to be selling or about to sell power in Montana to be licensed here or are there a bunch of suppliers that are considering selling someday in Montana so they get the license to cover themselves in case the opportunity arises.

Ann Yates responded the Public Service Commission is in the process of making the rules for licensing electricity suppliers in Montana. The way it would probably work, and which is not finalized yet, is if someone is considering selling electricity in Montana they would go ahead and get a license. She did not think it would affect interstate commerce because anybody doing business in Montana has to be licensed here. You can be from out of state but you still have to be licensed.

CHAIRMAN CHRISMORE said action on this bill would be postponed until Monday to give more time to look into the amendment and legalities.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 8.5; Comments : None.}

EXECUTIVE ACTION ON SB 48

Motion/Vote: SEN. GROSFIELD moved that SB 48 BE AMENDED. Motion carried unanimously.

Discussion: SENATOR GROSFIELD passed out the amendments and a gray bill that incorporates the amendments into the bill for the Committee's convenience. **EXHIBIT(nas15a01)** There are no substantive changes in the bill but the bill as presented is confusing. These amendments clarify this bill. **Jeff Hagener** and **Bud Clinch** are here from the Department to walk us through them and answer any questions.

Jeff Hagener, Trust Fund Administrator for DNRC, stated most of the amendments are a result of **SEN. GROSFIELD'S** concerns and we also discussed these with **Roger Lloyd** from the **Legislative Fiscal**

Division. Mr. Hagener went on to discuss the amendments as per EXHIBIT (1).

{Tape : 1; Side : A; Approx. Time Counter : 8.5 - 13.6; Comments : None.}

Discussion: SENATOR KEATING said there are nine trust funds but not all are active. They all have a balance but the flow into the trust may not be active in a particular year. Do you still take 1 1/8% of the balance in the trust as administrative cost? Jeff Hagener responded no, we are not touching any of the money that currently lies in the account. We are only talking about the flow that would be flowing into the account. There may be some rare case, that virtually every account has money that flows into it every year. Some are smaller amounts from one year to the next but we are not taking anything that is in the permanent funds now, it is only on the flow to it. SEN. KEATING stated in essence your administrative account is actually nine accounts and you take 1 1/8% of the flow into each of those trusts. Mr. Hagener replied there are nine nonexpendable trusts and then the Capitol Building Fund. Actually there are ten individual trusts we manage and the answer is there is a cap on the amount that goes into each one of them. The cap is based upon the balance in the fund. The maximum we can take is 1 1/8% of the balance that is in the account. We are not taking it from the account, we are taking it from the flow that goes into the account. SEN. KEATING questioned what if the flow into the trust was less than 1% of the balance of the trust? Mr. Hagener replied if it was less, they would have a problem. They have looked at it over the past 20 years and it should not be problem in accordance with what they have had for 20 years. SEN. KEATING said he now understood but suggested they take a look at Murphy's Law.

Larry Mitchell stated he had not had a chance to review the amendments nor run them through editing. He did notice some errors between the gray bill and the amendments, he could only assume they flowed with the bill and if adopted they will fit. If they do not, he wanted to reserve some latitude and flexibility to make them fit if they are adopted.

SENATOR GROSFIELD stated that latitude was part of his motion.

Vote: Motion that AMENDMENT DO PASS carried 11-0.

Motion: SEN. GROSFIELD moved that SB 48 DO PASS AS AMENDED.

Discussion: SENATOR TAYLOR questioned if a piece of state land sits in the middle of private property which nobody could use, is that something that you would entertain buying so that money

could be used somewhere else? **Mr. Hagener** replied there are numerous statutes in place that allow for the sale of trust lands. One of them, that is most important to this discussion, requires the Land Board approve any sales. At the current time the Land Board has not been willing to sell much of any land for some time. **SEN. TAYLOR** stated the reason he asked was because the BLM is selling a lot of their land in certain areas, surrounded by private property, in the State of Montana. They take that money and buy other property open to the public. He thinks it is a good policy.

Vote: Motion that **SB 48 DO PASS AS AMENDED** carried 7-4 on a Roll Call Vote.

{Tape : 1; Side : A; Approx. Time Counter : 13.6 - 19.5; Comments : None.}

ADJOURNMENT

Adjournment: 3:45 P.M.

SEN. WILLIAM CRISMORE, Chairman

JYL SCHEEL, Secretary

WC/JS

EXHIBIT (nas15aad)